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January 12, 2005

VIA OVERNIGHT DELIVERY AND EMAIL

Ms. Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: D.T.E. 04-33: Petition of Verizon New England Inc. for Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts, Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order

Dear Ms. Cottrell:

Broadview Networks Inc. and Broadview NP Acquisition Corp., Bullseye Telecom Inc., ClearTel Telecommunications f/k/a Essex Acquisition Corporation, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corporation, KMC Telecom V, Inc., and Talk America Inc. (members of the "Competitive Carrier Group"), through counsel, hereby submit an original and seven (7) copies of their Opposition to the Motion of Verizon Massachusetts Inc. for relief from the Department's December 15, 2004 Procedural Order in the above-referenced arbitration. Enclosed please find a duplicate of this filing and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided.

KELLEY DRYE & WARREN LLP

Ms. Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
January 12, 2005
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Please feel free to contact the undersigned at (202) 887-1211 if you have any questions or require further information.

Respectfully submitted,



Brett Heather Freedson

cc: Tina W. Chin, Arbitrator
Michael Isenberg, Director, Telecommunications Division
April Mulqueen, Assistant Director, Telecommunications Division
Berhane Adhanom, Telecommunications Analyst
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Verizon New England Inc. for)
Amendment to Interconnection Agreements)
with Competitive Local Exchange Carriers)
and Commercial Mobile Radio Service) D.T.E. 04-33
Providers in Massachusetts, Pursuant to)
Section 252 of the Communications Act of)
1934, as Amended, and the Triennial Review)
Order)

**OPPOSITION TO THE MOTION OF VERIZON MASSACHUSETTS INC.
FOR RELIEF FROM THE PROCEDURAL ORDER**

Broadview Networks Inc. and Broadview NP Acquisition Corp., Bullseye Telecom Inc., ClearTel Telecommunications f/k/a Essex Acquisition Corporation, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corporation, KMC Telecom V, Inc., and Talk America Inc. (the “Competitive Carrier Group”),¹ through counsel, hereby respectfully request that the Massachusetts Department of Telecommunications and Energy (the “Department”) deny the Motion of Verizon Massachusetts Inc. (“Verizon”)² for relief from the Department’s December 15, 2004 Procedural Order in this arbitration. At bottom, the Department – and not Verizon – must determine whether Verizon is permitted, under the terms and conditions of its individual existing interconnection agreements, to discontinue providing unbundled access to its network elements within Massachusetts upon notice to affected competitive local exchange carriers (“CLECs”). The Department correctly concluded, in its Procedural Order, that Verizon’s unbundling obligations, under section 271 of the Communications Act of 1934, as amended, 47 U.S.C. § 271 (the “Act”), Massachusetts state law

¹ The following members of the Competitive Carrier Group are not parties to this Opposition: A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Comcast Phone of Massachusetts Inc., IDT America Corp., Spectrotel, Inc., XO Communications, Inc. and XO Massachusetts Inc.

and other applicable law, are properly before the Department in this arbitration.³ Therefore, the Department's directive that Verizon continue to provide to Massachusetts CLECs network elements, including those network elements impacted by the *Triennial Review Order* and the D.C. Circuit's *USTA II* mandate,⁴ on an unbundled basis, until such time as the Department finally resolves Verizon's interconnection agreement obligations under applicable law, is both lawful and appropriate.⁵

Section 252 of Act permits, and in fact, requires that the Department interpret and enforce the unbundling obligations imposed on Verizon by the interconnection agreements that the Department previously approved, and furthermore, to assess the impact of the *Triennial Review Order*, the D.C. Circuit's *USTA II* mandate and the permanent unbundling rules of the Federal Communications Commission ("FCC"), soon to be released,⁶ on such contract-based

² Verizon Massachusetts' Motion for Relief From the Procedural Order, (Jan. 4, 2005).

³ *Petition of Verizon New England Inc. for Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts, Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, D.T.E. 04-33, Procedural Order (Dec. 15, 2004).

⁴ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ("*Triennial Review Order*"), *vacated and remanded in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

⁵ Procedural Order at 32-33.

⁶ *See FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers*, Federal Communications News Release, Dec. 15, 2004.

obligations undertaken by Verizon within Massachusetts.⁷ As the Department correctly found, under its Procedural Order, the Act requires that this arbitration encompass any disputed issue of fact or law raised in Verizon's Petition and in the Answer of the Competitive Carrier Group.⁸ Therefore, to the extent that the parties dispute the scope of Verizon's unbundling obligations under existing interconnection agreements, the Department must arbitrate the scope of Verizon's unbundling obligations and whether Verizon may, at this time, discontinue providing network elements to Massachusetts CLECs, including the Competitive Carrier Group, that Verizon unilaterally has determined no longer are required by applicable law.

As is clearly reflected by Verizon's Petition⁹ and the Answer of the Competitive Carrier Group,¹⁰ the parties disagree with regard to the scope of Verizon's unbundling obligations under existing interconnection agreements with Massachusetts CLECs. Specifically, Verizon's position that it may discontinue, upon notice to affected CLECs, certain network elements that Verizon no longer is required to provide under section 251 of the Act is based solely on Verizon's narrow interpretation of "Applicable Law" under existing interconnection agreements. In stark contrast, the Competitive Carrier Group consistently has argued before the Department that "Applicable Law," as defined under existing interconnection agreements, encompasses *all* federal law, including section 271 of the Act, and Massachusetts state law.¹¹

⁷ *Southwestern Bell Tel. Co. v. Pub. Util Comm'n Texas*, 208 F.3d 475, 479 (5th Cir. 2000); see also *Michigan Bell Tel. Co. v. MCIMetro*, 323 F.3d 248, 356-57 (6th Cir. 2003); *BellSouth Telecomm. Inc. v. MCIMetro*, 317 F.3d 1270, 1276 (11th Cir. 2003) (*en banc*).

⁸ Procedural Order at 23.

⁹ Petition for Arbitration of Verizon New England Inc. (filed Feb, 20, 2004).

¹⁰ Answer of the Competitive Carrier Group to Verizon New England Inc. d/b/a Verizon Massachusetts' Petition for Arbitration of an Interconnection Agreement Amendment (filed Mar. 16, 2004).

¹¹ Answer at 12.

Accordingly, as set forth in its Answer, the Competitive Carrier Group has presented for arbitration clarifying contract language that incorporates Verizon's unbundling obligations under section 271 of the Act, Massachusetts state law and other applicable law, even to the extent that such unbundling obligations no longer exist under section 251 of the Act.¹²

For the reasons stated above, the Competitive Carrier Group respectfully requests that the Department deny Verizon's Motion For Relief From the Procedural Order, and accordingly, that the Department maintain the carriers named above as parties to this arbitration.

Respectfully submitted,



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Counsel to the Competitive Carrier Group

Dated: January 12, 2005

¹² The recent Order of the Department dismissing its *Triennial Review Order* investigation does not foreclose a review by the Department, in this Arbitration, of contract language clarifying Verizon's ongoing unbundling obligations under section 271 of the Act and/or Massachusetts state law. See *Proceeding by the Department of Telecommunications and Energy on its Own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order*, D.T.E. 03-60, Consolidated Order Dismissing Triennial Review Order Investigation and Vacating Suspension of Tariff M.D.T.E. No. 17 (Dec. 15, 2004).